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OFFICE OF PETITIONS

In re Application of	:	
Motojima et al.	:	
Application No. 09/403,894	:	ON PETITION
Filed: October 26, 1999	:	
Attorney Docket No. 087711-000000US	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed March 28, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to properly and timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 25, 2003. A two-month extension of time under the provisions of 37 CFR 1.136(a) was timely obtained. Accordingly, the application became abandoned on September 26, 2003. A Notice of Abandonment was mailed June 17, 2004 and on January 25, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.²

The instant petition lacks item(s) (3).

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

² See MPEP 711.03(c)(III)(C) and (D).

The renewed petition does not include a statement and or declaration from Kevin T. LeMond, the attorney prosecuting the application at the time of its abandonment. This information was not included in the renewed petition and therefore it remains unclear what Mr. LeMond knew from the time the application went abandoned on September 26, 2003 until the filing of a petition on March 23, 2007. As stated in the January 29, 2008 petition dismissal letter, **"Statements are required from any and all persons then at the practice of Townsend and Townsend and Crew, LLP, and the responsible person(s) having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action."** Therefore, a statement from Mr. Kevin T. LeMond is required in response to this dismissal.

Petitioner may wish to pursue reinstatement of the patent under the unavoidable provisions of 37 CFR 1.137(a). A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) **a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable;** and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Window located at:

 U.S. Patent and Trademark Office
 Customer Service Window Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By fax: (571) 273-8300
 ATTN: Office of Petitions

Any questions concerning this matter may be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions